

Application No. 09/994,458
Amendment Dated 4/11/05
Reply to Office Action of 2/10/05

REMARKS

This Amendment is submitted in response to the Final Office Action mailed on February 10, 2005. Claims 41-49 stand withdrawn pursuant to a restriction requirement raised by Examiner in the Final Office Action. Claims 15-19, 26-28 and 38-40 remain in the present application. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

Claims 15, 18-19, 26-28 and 38-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al., U.S. Patent No. 5,948,359 in view of Levine et al., U.S. Patent No. 5,854,075 and in view of Andersen et al., U.S. Patent No. 5,417,121. Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al. in view of Levine et al. and Andersen et al., further in view of Tseung et al., U.S. Patent No. 6,746,851. Lastly, claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al. in view of Levine et al. and Andersen et al. and further in view of Rhett et al., U.S. Patent No. 5,839,091. Applicants respectfully traverse these rejections for the reasons set forth below and respectfully request that the rejections be withdrawn.

In particular, each of independent claims 15 and 26 recites a reagent container having an upper wall, a base wall, and a tubular side wall interconnecting the base and upper walls. The upper wall is spaced apart from the base wall along an

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imaginary line passing through the base and upper walls. The base wall has a nadir which forms the lowermost portion of the reagent container (see Page 13, lines 21-23 and numeral 104 in Figs. 6 and 10, for example). The upper wall has an access opening, and the nadir and access opening are aligned with each other along the imaginary line. In this way, a probe entering the opening in a direction substantially parallel to the imaginary line is directed toward the nadir. In accordance with the principles of the present invention, the lowermost portion or nadir of the reagent container increases the efficiency of reagent extraction from the reagent container so that the reagent container can be filled with less excess volume of reagent beyond the volume required for the staining run (see Page 14, line 19 through Page 16, line 4).

In contrast, the reagent vessel of Andersen et al. has a tube (66) which extends downwardly into the liquid in the vessel, with its end (68) being near to the bottom of the vessel (see Fig. 3 and Col. 9, lines 25-28). The vessel has a sloping bottom wall (73) which forms a lowermost portion or nadir adjacent a front face of the vessel which is offset from the tip (68) of the tube (66) as shown in Fig. 3.

Applicants respectfully submit that in the vessel of Andersen et al., the lowermost portion or nadir of the vessel is not aligned with the opening in the top wall of the vessel along an imaginary line as claimed by Applicants so that the vessel of Andersen et al. does not address the problem solved by the present invention to minimize the required excess volume of reagent in the container beyond the volume

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required for a staining run. Rather, and contrary to the present invention, the vessel of Andersen et al. creates a pool of reagent in the lowermost portion or nadir of the vessel that cannot be aspirated by the tube (66) as is evident from Fig. 3. Accordingly, Applicants respectfully submit that the combination of elements recited in each of independent claims 15 and 26 is not taught or suggested by the prior art of record and the rejections should be withdrawn.

Moreover, as claims 16-19, 27, 28 and 38-40 depend from allowable independent claim 15 and 26, and further as each of these claims recites a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicants do not believe that this response requires that any fees be submitted, however, if any fees are deemed necessary, these may be charged to Deposit Account No. 23-3000.

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Respectfully submitted,

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